

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KIM MCGOWAN,
Plaintiffs,
vs.
CREDIT MANAGEMENT, LP,
Defendants.

Case No. 2:14-cv-759-APG-VCF

ORDER

This matter involves Kim McGowan's civil action under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A) and Fair Debt Collection Practices Act, 15 U.S.C. § 1692d. Before the court is McGowan's Motion to Compel (#11). Credit Management LP opposed (#12); McGowan failed to reply. For the reasons stated below, McGowan's Motion to Compel is deferred and a hearing is set for March 25, 2015, at 10:00 a.m.

BACKGROUND

Kim McGowan is a resident of Clark County, Nevada. (Compl. (#1) at ¶ 3). She has no established relationship with Credit Management, LP. (*Id.* at ¶ 4). She never gave Credit Management permission to call her and has no contractual obligations to pay Credit Management. (*Id.* at ¶¶ 4–5). Nonetheless, Credit Management repeatedly called McGowan’s cell phone, demanding payment for an alleged debt. (*Id.* at ¶ 6). Between December 26, 2013, and March 4, 2014, Credit Management called McGowan at least 21 times. (*Id.*)

Accordingly, on May 14, 2014, McGowan commenced this under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A) and Fair Debt Collection Practices Act, 15 U.S.C. § 1692d. On

1 August 15, 2014, the parties stipulated to a discovery plan and scheduling order, which set the following
 2 dates: (1) December 4, 2014, as the last date to file “discovery-related motions,” (2) January 4, 2015, as
 3 the discovery cutoff date, and (3) February 3, 2015, as the dispositive-motions deadline. (Sched. Or. (#9)
 4 at ¶¶ 1, 5, 10).

5 On November 6, 2014, the parties filed their Interim Status Report. (Doc. #10). Credit
 6 Management removed language that would have extended the discovery deadlines. (Def.’s Opp’n (#12)
 7 at 3:15–18) (citing Ex. 2). McGowan did not object or even respond. (*See id.*)

8 On November 13, 2014, the last day to move to extend the discovery-related motions deadline
 9 elapsed. No request to extend was filed. On December 4, 2014, the last day to file a discovery-related
 10 motion elapsed. No discovery motions were filed. On December 15, 2014, the last day to move to extend
 11 the discovery cutoff deadline elapsed. No request to extend was filed.

12 On January 2, 2015, McGowan untimely moved to compel and requested a modification of the
 13 court’s scheduling order. Credit Management opposed, arguing that McGowan’s motion is untimely. On
 14 January 26, 2015, the deadline for McGowan to reply elapsed. No reply was filed.

16 DISCUSSION

17 The parties’ filings presents one question: whether the scheduling order should be modified so that
 18 the court may entertain McGowan’s Motion to Compel. The courts inquiry begins with the governing law.

19 A. *Legal Standard*

20 Federal Rule of Civil Procedure 16(b)(4) governs the modification of scheduling orders. In
 21 pertinent part, it provides that “[a] schedule may be modified only for good cause and with the judge’s
 22 consent.” FED. R. CIV. P. 16(b)(4). In the context of Rule 16, good cause is measured by diligence. *See*
 23 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294–95 (9th Cir. 2000) (citing *Johnson v. Mammoth*
 24 *Recreations, Inc.*, 975 F.2d 604, 607–09 (9th Cir. 1992)). The rule permits modification of a scheduling
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1 order, but only if the existing deadlines cannot be met despite the diligence of the party seeking the
 2 extension. *Coleman*, 232 F.3d at 1295. Where the movant “fail[s] to show diligence, the inquiry should
 3 end.” *Id.* (citation and quotation marks omitted).

4 Local Rule 26-4 supplements Federal Rule 16. It states that scheduling orders may be modified for
 5 good cause, provided that a motion to extend is made “no later than twenty-one (21) days before the
 6 expiration of the subject deadline.” LR 26-4. Additionally, a motion to extend discovery must include:
 7 (1) a statement specifying the discovery completed; (2) a specific description of the discovery that remains
 8 to be completed; (3) the reasons why the deadline was not satisfied or the remaining discovery not
 9 completed within the time set by the discovery plan; and (4) a proposed schedule for completing all
 10 remaining discovery. *Id.*

11 If, however, a request is made after the expiration of the subject deadline, the movant’s request
 12 “shall not be granted” unless the movant demonstrates that the failure to act was the result of “excusable
 13 neglect.” LR 26-4. Excusable neglect approximates negligence. *See Lemoge v. United States*, 587 F.3d
 14 1188, 1195 (9th Cir. 2009). Courts consider four factors when determining whether neglect is excusable:
 15 (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on
 16 the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Bateman*
 17 *v. United States Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir. 2000) (citing *Pioneer Inv. Servs. Co.*
 18 *v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). This determination is equitable, *Pioneer*, 507
 19 U.S. at 395, and left to the district court’s discretion. *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir.
 20 2004).

22 Scheduling orders are critical to the court’s management of its docket. The court is charged with
 23 securing “the just, speedy, and inexpensive determination of every action and proceeding.” FED. R. CIV.
 24 P. 1. Delay frustrates this command. Accordingly, the Ninth Circuit has emphasized that a case
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1 management order “is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by
2 counsel without peril.” *Mammoth Recreations, Inc.*, 975 F.2d at 610 (internal quotations and citations
3 omitted).

4 **B. A Decision on McGowan’s Motion to Compel is Deferred**

5 McGowan’s Motion to Compel and request to modify the scheduling order is deferred for three
6 reasons. First, the Motion to Compel is untimely. The deadline to move to compel expired on December
7 4, 2014. (Sched. Or. (#9) at ¶ 10). McGowan moved to compel nearly a month later, on January 2, 2015.

8 Second, McGowan’s request to modify the scheduling order was filed two days before the
9 expiration of the subject deadline (*i.e.*, the January 4, 2015, discovery cutoff date), not 21 days before, as
10 Local Rule 26-4 requires. Additionally, McGowan’s request to modify the scheduling order failed to
11 include (1) a statement specifying the discovery completed; (2) a specific description of the discovery that
12 remains to be completed; (3) the reasons why the deadline was not satisfied or the remaining discovery
13 not completed within the time set by the discovery plan; and (4) a proposed schedule for completing all
14 remaining discovery. LR 26-4.

15 Third, McGowan’s requests are not granted because she did not argue that her failure to timely
16 move to compel and modify the scheduling order is attributable to excusable neglect. (*See generally* Pl.’s
17 Mot. to Compel #11).

18 Therefore, the court’s inquiry must end here. *Coleman*, 232 F.3d at 1295 (stating that where the
19 movant “fail[s] to show diligence, the inquiry should end.”). Nonetheless, the court grants McGowan leave
20 to file a Motion to Modify the Scheduling Order, which demonstrates that her failure to act was the result
21 of excusable neglect. McGowan’s Motion to Modify the Scheduling Order must be filed before February
22 20, 2015. The court will hear oral argument on McGowan’s Motion to Modify the Scheduling Order on
23 March 25, 2015. If McGowan’s Motion to Modify the Scheduling Order is granted, then the court will
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1 also hear oral argument on McGowan's Motion to Compel (#11). If the scheduling order is not modified,
2 this action will proceed as previously scheduled.
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4 IT IS ORDERED that Kim McGowan's Motion to Compel is DEFERRED.
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6 IT IS FURTHER ORDERED that a hearing is set for March 25, 2015, at 10:00 a.m. in Courtroom
7 3D.
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9 IT IS FURTHER ORDERED that Kim McGowan is granted leave to file a Motion to Modify the
10 Scheduling Order, which demonstrates that her failure to act was the result of excusable neglect before
11 February 20, 2015. It will be briefed in the ordinary course. The court will hear oral argument on
12 McGowan's Motion to Modify the Scheduling Order on March 25, 2015. If McGowan's Motion to Modify
13 the Scheduling Order is granted, then the court will also hear oral argument on McGowan's Motion to
14 Compel (#11).
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16 IT IS SO ORDERED.
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18 DATED this 3rd day of February, 2015.
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20 CAM FERENBACH
21 UNITED STATES MAGISTRATE JUDGE
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